

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement Order No. R1-2003-0060

For

Mr. Charles Greene

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Mr. Charles Greene (Discharger), whose mailing address is 2108 Westside Road, Healdsburg, California, 95448-9410, constructed a boulder weir deflector (weir) in Dry Creek, Healdsburg, California without appropriate permitting. The weir is located on the right bank (facing downstream) of Dry Creek approximately 90 feet upstream of Mill Creek. It has the following dimensions: approximately 95 feet long from creek bank to tip of weir; approximately 20 feet wide; approximately 20 feet high at creek bank and 8 feet high at the weir tip. The weir contains approximately 600 cubic yards (yd<sup>3</sup>) of rock fill material, which was placed below the top of bank and below the ordinary high water mark of Dry Creek. According to aerial photographs it appears that the weir structure was constructed during the summer of 1999. Riprap has also been installed on Mr. Greene's property along the banks of Dry Creek, presumably to reduce bank erosion. The Regional Water Board did not authorize installation of either the weir or riprap. The Department of Fish and Game issued a Streambed Alteration Agreement for the project, allowing the placement of rock riprap and the weir structure.
2. On May 13, 2002, the Regional Water Board received a complaint regarding the weir structure from a neighboring landowner, who claimed the structure was deflecting the flow of Dry Creek towards his property and causing it to erode.
3. On May 22, 2002, Regional Water Board staff conducted an inspection of Mr. Greene's property in response to the complaint. During the inspection, staff observed the weir and corresponding riprap along the western bank of Dry Creek, just upstream of the confluence of Mill Creek and Dry Creek. The weir consisted of large boulders placed directly into Dry Creek, nearly perpendicular to the flow. Staff observed a large scour pool directly downstream of the weir. The length of the weir appeared to be one quarter of the total width of the creek channel. The weir appeared to be directing the flow of Dry Creek directly downstream towards the adjacent landowner's property on the opposite bank. The riprap along the bank of Dry Creek seemed to have been revegetated, and did not appear to be causing any detrimental water quality impacts. In addition, during the site visit staff observed several piles of soil and debris directly adjacent to and below top of bank along Mill Creek on Mr. Greene's property. Staff informed Mr. Greene of the necessity to remove the soil and debris piles in order to avoid discharges to waters of the state.

4. On August 9, 2002, the County of Sonoma Permit and Resource Department issued a Notice of Violation to Mr. Greene for the weir structure, stating that it had been constructed without the proper permit(s). The letter required Mr. Greene to either remove the weir or obtain the proper permit(s) within 10 days of the date of the letter.
5. On August 16, 2002, Mr. Edwin Wilson of Sayre and Wilson Attorneys at Law, on behalf of Mr. Greene, appealed the Notice of Violation and requested a hearing before the Sonoma County Board of Supervisors. Mr. Ben Neuman of Code Enforcement with Sonoma County, called Mr. Wilson before the first of the year, to schedule a site visit. Mr. Wilson failed to return Mr. Neuman's call, so Mr. Steve Pantazes of Code Enforcement with the County of Sonoma called Mr. Wilson a second time during the week of March 3, 2003. Mr. Wilson contacted Mr. Pantazes and stated that he was out of the country for a couple of weeks and would schedule a site visit upon his return. Mr. Neuman and Mr. Pantazes are currently waiting to conduct a site investigation.
6. On September 3, 2002, Regional Water Board staff met on the site with Dick Butler and Dan Torkamata of National Marine Fisheries Service (NMFS), Mike Oto and Bill Cox of the California Department of Fish and Game (DFG), Steve Chatham of Prununske and Chatham, Ryan Pearson of Pearson Exploration, Vince Schwab the adjacent property owner, a representative from the County of Sonoma, and the vineyard manager for Mr. Schwab's property. During the site visit the group viewed the weir structure and discussed the erosion issues on Mr. Schwab's property. The group concluded that the erosion on Mr. Schwab's property was not significant enough to warrant streambank stabilization measures at that time. The group achieved near consensus that the weir appeared to be directing the main flow of Dry Creek towards Mr. Schwab's property and likely was the cause of the noted erosion on his property. The group decided that the weir should be assessed by a Fluvial Geomorphologist to determine whether the weir was in fact causing increased erosion downstream, and if so what measures could be taken to eliminate the problem. In addition, Dick Butler, Dan Torkamata, Bill Cox and Regional Water Board staff member Andrew Jensen went to Mr. Greene's house to discuss the weir and to ask what permits and approvals he had obtained for the construction of the structure. Mr. Greene stated that he had received a Stream or Lakebed Alteration Agreement dated August 21, 1998, from Ms. Karen Maurer, Warden, of DFG. The Alteration Agreement was amended by Ms. Maurer in a hand written format on September 21, 1998 to allow for the placement of a "riprap deflection wall" in a "manner and location as discussed".
7. On September 9, 2002, Brian Cluer, Ph.D., Hydrologist/Fluvial Geomorphologist with NMFS, conducted a site visit along with Dick Butler of NMFS, Steve Chatham and Vince Schwab. The intention of the site visit was to obtain Mr. Cluer's professional opinion on the effects of the weir. Mr. Cluer stated that, due to the excessive height and length of the weir, increased shear stress has resulted along the left bank downstream from the structure, causing the bank to erode. In addition, Mr. Cluer related his judgement that the encroachment of Mill Creek on the Greene property has increased the sediment load to the confluence with Dry Creek, exacerbating the hydraulic effects of the weir, causing bank erosion on Mr. Schwab's property. Mr. Cluer concluded that the most cost effective and environmentally beneficial remediation of the erosion occurring on Mr. Schwab's property was to have the weir structure removed.

8. On March 10, 2003, Regional Water Board staff member Andrew Jensen met with Mr. Schwab and Mr. Chatham on Mr. Schwab's property to assess the extent of erosion that has occurred during the winter storms. Mr. Jensen observed that the section of streambank that had been observed to have minor erosion during the September 9, 2002 visit, currently exhibits extensive erosion. An area of approximately 50 linear feet by 40 feet had been newly eroded during the past winter storms. Mr. Schwab is concerned that the erosion will continue and he may lose some of his property. The area being eroded is directly downstream of the weir, which has directed the flow of Dry Creek into Mr. Schwab's property.
9. As a tributary of the Russian River, the beneficial uses of Dry Creek, as designated in the Water Quality Control Plan for the North Coast Region, include:
  - a. Municipal and domestic supply
  - b. Agricultural supply
  - c. Industrial supply
  - d. Industrial service supply
  - e. Groundwater recharge
  - f. Navigation
  - g. Hydropower generation
  - d. Water contact recreation
  - e. Non-contact water recreation
  - f. Commercial and sport fishing
  - g. Warm freshwater habitat
  - h. Cold freshwater habitat
  - i. Rare, threatened, or endangered species
  - j. Wildlife habitat
  - h. Fish migration
  - i. Fish spawning
10. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:
  - Prohibition 1 - *"The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited."*
  - Prohibition 2 - *"The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."*

11. The Action Plan states: “where investigations indicate that the beneficial uses of water may be adversely affected by waste dischargers, the staff shall require the submission of Reports of Waste Discharge.”
12. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:
  - Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
  - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
  - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
  - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
  - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
13. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:
  - Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
  - Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
  - Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued*

*pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*

- *Section 13304(a) - “Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”*
14. As explained above, the Discharger has placed a boulder weir deflector structure into Dry Creek and has therefore caused a discharge of waste into waters of the state.
  15. The quantity and manner in which the weir material was placed caused the direct loss of riparian habitat and its associated functions, which is deleterious to fish, wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. Riparian habitat generally consists of trees, shrubs and woody species, that perform important functions related to water quality including but not limited to: providing shade to the river; reducing water flow velocities along the river bank; increasing habitat complexity; adding organic matter to the river; reducing erosion potential by providing stability to the river bank through root structures. In addition, the weir is causing increased erosion along the opposite downstream bank, further reducing riparian habitat and increasing sediment discharges to Dry Creek. Removal of this habitat is deleterious to fish, wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the rock material is therefore subject to cleanup and abatement under California Water Code Section (CWC) 13304.
  16. The weir also threatens to create pollution or nuisance because they threaten to exacerbate loss of riparian habitat and increase erosion downstream of the structure, which unreasonably interfere with beneficial uses. The placement of the weir material has increased erosion downstream, threatening to create pollution or nuisance and is therefore subject to cleanup and abatement under CWC 13304.
  17. The workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board’s public file on this matter.
  18. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.

19. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to CWC Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
20. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304, the Discharger shall:

1. Take action to remove the weir in its entirety, and restore the affected streambed and bank. Remediation measures shall include removing all rock associated with the weir in the channel of Dry Creek. All work shall be completed between June 30 and October 15, 2003, and no later than October 15, 2003.
2. Submit a report to the Regional Water Board on or before July 31, 2003 that describes the removal of the weir, and mitigation measures that will be incorporated to protect water quality.

Ordered by \_\_\_\_\_

Susan A. Warner  
Executive Officer

June 24, 2003